

REMARKS

All the claims, including claims 1 -12, 15, 17-27, and 29-32, have been rejected either under Section 102 based on United States Patent Number 5,459,980 (Kenney) or under Section 103 relying on Kenney as the primary reference. Based on the amendments and arguments below, Applicant requests reconsideration of the pending rejections and favorable examination.

Amended claim 1 recites that the “second sheet is pre-shaped to fit at least partially around the products or grouped products before the sheet comes into contact with the products or grouped products.” Independent claims 9 and 11 recite a “pre-shaping device” and its structure. Section 5 of the pending office action states that Kenney does not disclose sheets that are pre-fit to the shape of the product, but finds that United States Publication Number US2002/0157355 (“Tampieri”) discloses the “pre-fit” limitation. The Office Action further states that it would have been obvious to modify Kenney’s structure and function by pre-forming one of the sheets to fit the product in order to provide a more attractive packaging for the products.

Each of claims 1, 9, and 11, however, require “a planar first sheet” on which the products are positioned. Tampieri, in contrast, teaches that its *lower* sheet is pre-shaped. Tampieri’s products are placed in the pre-shaped blisters before being sealed by an upper sheet. Tampieri’s configuration has the drawback of being complicated with regard to damaging the pre-shaped sheet, in particular if the sheet is flexible, compared with the invention of claims 1, 9, and 11. In Tampieri the pre-shaped sheet (to the extent the blister pack of Tampieri constitutes a pre-shaped sheet) is the lower sheet, which would rest on the supporting drums and require special adaptation of the transport equipment to support the moving pre-shaped sheet without damaging the pre-formed shape, which would discourage modifying Kenney to use the blister pack of Tampieri. Further, Tampieri neither teaches nor suggests turning its blister pack upside down, placing the products on a moving flat sheet, and covering them with a synchronized moving pre-shaped sheet, as claimed.

With regard to dependent claim 4, the Office Action states that it would be obvious to replace the rollers of Kenney with the reciprocating pre-shaping device of Tampieri. However, Kenney does not show that the rotating rollers are a pre-shaping device, but instead

the rollers comprise mating die-type pockets, and it is not clear how the rotating rollers of Kenney would be transformed into a rotating pre-shaping device.

Independent claims 12, 15 and 26 recite an array or bandolier of packaged products. Claims 15 and 26 recite “wherein the upper sheet end portions and portions of the lower sheet forming the end seals are folded upwardly, whereby rigidity of the package is enhanced.” Claim 12 has like language. No art is cited for this limitation, but the Office Action states in section 6 that “folding the edge upwards and heat-sealing the edges are art-recognized equivalents in the packaging arts for joining sheets and it would have been obvious to one of ordinary skill in the art at the time the invention was made to fold the edge(s) of the joined sheets up and over in order to provide redundancy and increased strength of the bond”.

Johnson’s figures shows the sheets joined along a seam near the centerline of the array of products, and bending its seam has little relevance to Applicant’s claimed structure. Moreover, it is unclear whether folding the edges of the jointed sheets up and over would provide increased strength of the bond, which was a rationale for modifying Johnson’s structure. According to the wording of the claim, the edges are bent in order to give the array rigidity in its longitudinal direction (as shown in fig. 4). Folding the edges likely does not contribute to an increased strength of the bond between the sheets.

Claims 20 and 32 recite that the distance between each candy bar in the array is less than the height of each candy bar. The Examiner states on page 6 that this feature would be obvious, “since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art”. However, the cited art does not address this feature, as it appears to be unable to obtain a closely packed bandolier as claimed. The machines of Kenney and Johnson appear to be incapable of being adapted for this purpose by simply changing the dimensions of the relevant parts of the machine. The configuration required by claims 20 and 32 requires that the sealing ribs are of such height and thinness that, if using the structure of Kenney and Johnson, damage may occur to the upper sheet and/or the product upon pushing the sheet.

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Based on the foregoing, Applicant submits that the claims recite patentable subject matter. If the Examiner determines that a telephone conversation would advance the prosecution of this Application, he is invited to telephone the undersigned at his convenience.

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